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RECENT INHERITANCE-TAX STATUTES AND DECISIONS.

AT the beginning of the present decade the taxation of inheritances in the United States was confined to half a dozen commonwealths—Connecticut, New York, Pennsylvania, Delaware, Maryland, and West Virginia—forming a little group of which Pennsylvania was the geographic center, as it was also the state which had first resorted to that form of taxation. In 1891 this group of states was enlarged by the addition of Massachusetts at one end and Tennessee at the other, and the following year New Jersey was added. Maine, Michigan, Ohio, and California adopted this form of taxation in 1893, Louisiana revived its old tax on foreign heirs in 1894, while inheritance-tax laws were enacted in 1895 by Illinois and Missouri, in 1896 by Vermont, Virginia, and Iowa, and in 1897 by Minnesota and Montana. Thus the legislation of seven years has added fifteen states to the list; but the laws of Michigan and Missouri have been annulled by the courts for local or special reasons, so that the inheritance tax is now found in just nineteen commonwealths. It should be added that in the income-tax provisions of the national revenue act of 1894, income was so defined as to include "money and the value of all personal property acquired by gift or inheritance." Whenever the sum of an inheritance and the year's income proper exceeded $4000,

therefore, the excess was to have been taxed 2 per cent. The annulment of the income tax by the supreme court did away with this part of it, although it is well established that Congress may impose an inheritance tax as such;[1] and this it has now done in the war revenue act.

Two important tendencies which had not before made themselves felt in America have been particularly noticeable in this recent legislation; progressive rates have been adopted in four cases, and in several states the tax has been made applicable to direct as well as collateral heirs.

In Ohio, the act of 1893[2] imposing a collateral inheritance tax was supplemented the following year[3] by an act placing a progressive tax upon direct inheritances, at the following rates:

When the value of the entire property of the decedent —

Exceeds	$ 20,000	and does not exceeed	$ 50,000,	1 per cent.
Exceeds	50,000	" " " "	100,000,	1½ " "
Exceeds	100,000	" " " "	200,000,	2 " "
Exceeds	200,000	" " " "	300,000,	3 " "
Exceeds	300,000	" " " "	500,000,	3½ " "
Exceeds	500,000	" " " "	1,000,000,	4 " "
Exceeds	1,000,000	....		5 " "

This tax applied not only to heirs in the direct line, but to all relatives exempt from the collateral inheritance tax, including the decedent's brothers and sisters, nephews and nieces. The tax on more distant relatives and strangers was now[4] increased from 3½ to 5 per cent., and the exemption was reduced from $10,000 to $200.

The direct inheritance-tax law was declared unconstitutional by the supreme court of Ohio in June 1895,[5] one of the six judges dissenting. The chief contention in opposition to the tax was that it was a tax on property, and hence in violation of a constitutional provision directing that laws should be passed taxing by a uniform rule all property according to its true value

[1] Scholey *vs.* Rew, 23 *Wallace*, 331.

[2] *Laws of 1893*, p. 14.

[3] *Laws of 1894*, p. 166.

[4] *Ibid.*, p. 169.

[5] State *vs.* Ferris, 53 *Ohio State*, 314.

in money. The circuit court of Hamilton county had denied that it was a tax on property, but had held it unconstitutional on the sole ground that there was an exemption of $20,000 without a corresponding deduction from the taxable estates. "If the statute exempted $20,000 (or any other sum) of every estate from taxation," said this court, "it would, in our judgment, be equal and valid, even in imposing a graded tax, as it does." The supreme court of the state agreed with the lower court that the tax was not one on property, but was on the right or privilege of succession, and hence was not inconsistent with the above-mentioned clause of the constitution; but both the exemption of $20,000 and the progressive scale were held to be in conflict with the following section of the bill of rights:

> All political power is inherent in the people. Government is instituted for their equal protection and benefit.

As the conclusion is at first sight none too obvious, the reasoning of the court is reproduced below:

> If government is instituted for the equal protection and benefit of the people, it follows that laws which are passed under a government so instituted, must likewise be for the equal protection and benefit of the people. This statute fails to protect equally the people who exercise the right and privilege of receiving or succeeding to property. The right to receive the first twenty thousand dollars of an estate not exceeding that sum, is protected from taxation, while the right to receive the first twenty thousand dollars of an estate exceeding that sum is taxed the sum of two hundred dollars. This is not equal protection. Again, the right to receive fifty thousand dollars' worth of property of an estate not exceeding that sum is taxed five hundred dollars, while the right to receive fifty thousand dollars of an estate exceeding that sum is [taxed] seven hundred and fifty dollars. This is not equal protection. The same may be said of the other gradations provided for in the statute.
>
> The right or privilege of receiving or succeeding to property is valuable in proportion to the value of the thing received. It cannot be consistently said that the right to receive twenty thousand dollars is of no value, and that the right to receive twenty thousand and one dollars is of the value of two hundred dollars and one cent.
>
> Again, he who uses the right or privilege of receiving property of the value of twenty thousand and one dollars, and pays therefor a tax of two

hundred dollars and one cent, is not equally benefited for the tax paid, as he who usés the same right or privilege of receiving property of the value of twenty thousand dollars, without paying any tax whatever for the use of such right. The exemption of twenty thousand dollars and the increase of the per cent. as the value of the estate increases, renders this statute unconstitutional.

Our constitution requires equality in our tax laws, and also equality in their execution as near as may be. The only exemption allowed, as to taxation of property, is personal property to the amount of two hundred dollars to each individual, and certain other property devoted to public or charitable uses. Two hundred dollars in value to each individual is the extent to which the legislature has the power to exempt personal property from taxation. The constitution must be regarded as consistent with itself throughout, and as section 2, of article 12, permits an exemption from taxation of personal property not exceeding two hundred dollars, a construction of section 2 of the bill of rights is thereby evinced to the effect that in the taxation of subjects other than property, an exemption up to two hundred dollars in value would be regarded as for the equal protection and benefit of the people. The exemption must be equally for all, and the rate per cent. must be the same on all estates. There can be no discrimination in favor of the rich or poor.

The court declined to discuss the provisions of the Fourteenth Amendment to the Federal constitution in this connection, saying that they were no broader than the section of the state bill of rights above quoted. It will be noticed that the court emphasized the inequalities resulting from the particular mode of exemption and progression under consideration, rather than the inequality of progressive taxation in general. If the first \$20,000 of every estate had been exempt, if the next \$30,000 had been always subjected to the lowest rate, if the next higher rate had been applied only to the excess above \$50,000, and so on throughout the scale, not only would the tax have been much more equitable, but it might also have run the gauntlet of the courts in safety. To be sure, the supreme court added that "the rate per cent. must be the same on all estates," and even suggested that the constitutional requirements concerning property taxes were applicable to the matter of exemption, although it had refused to apply them to the matter of uniformity, and had expressly said "it is *property* and

not *franchises* that cannot be exempted;"[1] but these dicta were not necessary to the decision of the case, and cannot be considered as having the force of law.

While this case was pending in the supreme court of Ohio, a somewhat similar progressive tax was voted by the legislature of Illinois;[2] but the progressive rates were applied not to direct heirs as in Ohio, but only to distant relatives and strangers in blood, though the nearer relatives were favored with generous exemptions which really had the effect of introducing progression. The rates prescribed by this law were:

For the decedent's father, mother, husband, wife, child, or other lineal descendant, brother, sister, wife or widow of a son, husband of a daughter, or adopted child, 1 per cent. on the excess above $20,000 received by each person.

For the decedent's uncle, aunt, niece, nephew, or lineal descendants of the same, 2 per cent. on the excess above $2000 received by each person.

In all other cases (estates of less than $500 being exempt),

On all estates of	$10,000 and less,	3 per cent.
On all estates of over	10,000 and not exceeding 20,000,	4 per cent.
On all estates of over	20,000 and not exceeding 50,000,	5 per cent.
On all estates of over	50,000	6 per cent.

The validity of this law under the constitutions of Illinois and of the United States was soon brought in question in the courts, with varying results. It was affirmed by the county court of Adams county in August 1896,[3] but denied by the county court of Cook county in November of the same year.[4] Judge Carter, of the Cook county court, seemed disposed to sustain the legality of the exemptions, but he called attention to inequalities resulting from the form of progression adopted, very much as the Ohio courts had done. He said:

If the classification be based upon reason, I believe that under our constitution an inheritance tax could be levied, graded in proportion to the amount received by the beneficiaries. If this portion of the law that I am now discussing had been worded so that all beneficiaries should be taxed

[1] P. 333. [2] *Laws of 1895*, p. 301.

[3] Benton's Estate, 28 *Chicago Legal News*, 418.

[4] *In re* Drake Estate, 29 *Chicago Legal News*, 110.

3 per cent. on the first $10,000 that they received, 4 per cent. on the next $10,000, 5 per cent. on the next $30,000, and 6 per cent. on all in excess of that amount, I should feel strongly inclined to hold that the law was constitutional, even in the face of the Minnesota and Ohio decisions just referred to, and certainly a law drawn on reasonable lines graduating the taxes in proportion to the amount of property received by the beneficiaries, must be held constitutional, if the $20,000 exemption in the first class in this act be constitutional. Under the law as it was passed a person who is entitled to a legacy of $10,001 is taxed $400.04, and will actually receive only $9600.96, while a person who has a legacy of only $10,000 is taxed $300, and actually receives $9700, or about $100 more than the person who, under the will, was entitled to the larger legacy.

This case was appealed to the supreme court of the state, and the act in question was there sustained,[1] with but one dissenting vote among seven justices, as an exercise of the legislature's powers of regulation of inheritance and of classification for purposes of taxation. On the first point the court said:

The right to inherit and the right to devise being dependent on the legislative acts, there is nothing in the constitution of this state which prohibits a change of those subjects at the discretion of the law-making power. The law of descent and devise being the creation of the statute law, the power which creates may regulate and may impose conditions or burdens on a right of succession to the ownership of property to which there has ceased to be an owner because of death, and the ownership of which the state then provides for by the law of descent or devise. The imposition of such a condition or burden is not a tax upon the property itself, but on the right of succession thereto. To deny the right of the state to impose such a burden or condition is to deny the right of the state to regulate the administration of a decedent's estate.

But it was claimed in opposition to the law that it conflicted with a provision of the state constitution declaring that "the general assembly shall have power to tax . . . . persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates." As to this the court said:

That statute provides that certain classes of property which were a part of an estate shall be exempt from taxation under these provisions, and when

[1] Kochersperger *vs.* Drake, 167 *Illinois*, 122.

the legislature provides other classes of property, some of which shall pay $1 per $100, others $2, others $3, and others $4, and still others $5, and again others $6 per $100, six different classes are created, under and by which a tax is levied by valuation on the right of succession to a separate class of property. . . . . The broad principle presented is that the legislature may create new classes of property with reference to estates, under which they may regulate the right to inherit or devise, or take under devise.

The constitutionality of the tax was called in question also in two cases tried in the circuit court of the United States for the northern district of Illinois, and this tribunal followed the state supreme court in refusing to declare the act unconstitutional. All three of these cases were taken together to the United States supreme court for a final determination of the question whether the act was in violation of the Fourteenth Amendment to the Federal constitution. It was claimed that by this act, with its progressive rates and unusually large exemptions, the State of Illinois denied to persons within its jurisdiction the equal protection of the laws, deprived persons of property without due process of law, and abridged the privileges and immunities of citizens of the United States. The case against the law was ably argued by Mr. William D. Guthrie, of New York City, who was associated with Mr. Seward and Mr. Choate in the income-tax cases three years before, and by ex-President Harrison. The arguments in support of the law were by Mr. Edward C. Akin, attorney-general of Illinois, and Mr. T. A. Moran.

Mr. Guthrie urged the injustice, arbitrary character, and bad public policy of progressive taxation, and said : "If the legislatures are free to impose progressive taxes, the security of property is gone. Concede the principle of progression, and there is no limit to the injustice a legislature may commit upon the minority." He also called attention to the particular defects of the Illinois law which were pointed out by Judge Carter ; so that if the court had chosen it might have declared the act unconstitutional on account of those defects, without passing upon the question of the legality of progressive taxation in general.

Mr. Harrison's argument was less convincing than his colleague's. His was a difficult task, for he undertook to establish two propositions in the face of repeated opinions, both of state courts and of the tribunal before which he was arguing. These points were: (1) That the tax in question was a property tax rather than a tax on the privilege of inheritance, and (2) that the rights of inheritance and of testamentary disposition were natural rights not proceeding from the legislature, and beyond the power of the legislature to take away. "When they cease to be recognized as natural and fundamental rights," he said at the close of his peroration, "we shall have dissolved the basis on which society rests." The supreme court had within two years expressed the contrary opinions on both these points, even deciding that a state could tax a legacy to the United States, because the tax was a limitation of the testamentary power and not a tax on property.[1] The court in its opinion[2] cited this decision and many others of similar purport, without manifesting any inclination to reverse them; but a determination of these points was not strictly necessary to the decision of the case. The real basis of the decision was simply the principle that progressive taxation and generous exemptions are not in violation of the rule of equality in the Fourteenth Amendment. Said the court:

> That rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat "all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed."[3]

The opinion was delivered by Mr. Justice McKenna on April 25, and was among the first supreme court opinions from his

[1] United States *vs.* Perkins, 163 *United States*, 625.

[2] Magoun *vs.* Trust and Savings Bank, 170 *United States*, 283.

[3] The words in quotation marks are from Hayes *vs.* Missouri, 120 *United States*, 68.

pen. There was but one dissent from the opinion of the majority, and that, curiously enough, was by Mr. Justice Brewer, who was known to have expressed himself in favor of progressive inheritance taxes.[1] But this, he said in effect, was not a question of political economy, but of constitutional limitations.

Three years ago the legislature of Missouri imposed a collateral inheritance tax of 5 per cent. on small amounts and 7½ per cent. on the excess above $10,000.[2] This was accompanied by an additional tax on the organization of corporations (applicable also to foreign corporations proposing to do business in the state) at the rate of twenty-five cents for each thousand dollars of capital stock. The two taxes being thus joined in one statute, the latter seemed to bear some resemblance to the tax in lieu of an inheritance tax which some countries impose upon corporations in view of their immortality ; but the act provided also for a license tax on manufacturers of patent medicines, which tends to dispel the idea that the organization tax was based upon any such definite principle. One-fourth of the proceeds of all three taxes was assigned to the state "seminary fund;" the remainder was to constitute a "state university scholarship fund," to be held by the county treasurers for the benefit of the most promising needy matriculants from each county. This law was attacked in the courts, and has recently been annulled by the supreme court of the state,[3] mainly on the ground that the establishment of scholarships is not a public purpose for which taxes may be levied, though it was also criticised as imposing double taxation and lacking in uniformity; this was a few weeks before the inheritance-tax decision of the United States supreme court was announced. In the meantime the 7½ per cent. rate had been stricken out[4] at the instance of the friends of the law, who hoped that its chances in the courts

[1] DOS PASSOS, *Law of Collateral and Direct Inheritance, Legacy and Succession Taxes*, p. 2.

[2] *Laws of 1895*, p. 278.

[3] State *vs.* Switzler, 45 *Southwestern Reporter*, 245.

[4] *Laws of 1897*, p. 237.

would be improved by the relinquishment of the progressive feature.

The war revenue bill, as it passed the lower house or Congress at the end of April, contained among the stamp taxes of Schedule A a tax on probates of wills and letters of administration, beginning at fifty cents for small estates, and varying from about one twenty-five-hundredth to one ten-thousandth of the value of larger estates. The Senate Finance Committee struck out this tax and inserted instead a tax on legacies and distributive shares of personal property only, graduated both according to relationship, as were the legacy and succession taxes of the Civil War period, and also according to amount. The following minimum percentages were established for personal estates from $10,000 to $25,000 in value, only the surviving husband or wife being exempt:

Lineal issue, lineal ancestor, brother or sister, -	$\frac{3}{4}$	per cent.
Descendants of a brother or sister, - - -	$1\frac{1}{2}$	"
Brother or sister of a father or mother, and descendants thereof, - - - - - - - -	3	"
Brother or sister of a grandfather or grandmother, and descendants thereof, - - - - -	4	"
More distant relatives, strangers in blood, and bodies politic or corporate, - - - - - -	5	"

These rates are to be increased one-half for personal estates between $25,000 and $100,000 in value, doubled for those between $100,000 and $500,000, multiplied by 2½ for those between $500,000 and one million dollars, and multiplied by 3 for those of more than one million dollars. The maximum rate is, therefore, 15 per cent. which is twice as high as any inheritance tax ever before imposed in this country. Yet there was scarcely any opposition to this highly progressive scale, although Senator Lodge did criticise it because the rates were made to depend upon the whole amount of the decedent's personal estate instead of upon the size of the individual legacies.

In extending inheritance taxes to direct heirs New York

took the lead in 1891,[1] with a tax of 1 per cent. on direct inheritances of personal property of the value of $10,000 or more. The New York law as thus amended was closely copied by Michigan two years later,[2] but the Michigan act was declared unconstitutional because it failed to comply with a provision of the state constitution requiring specific state taxes to be applied to the interest of certain educational funds and the interest and principal of the state debt.[3] Then followed the equally ill-fated Ohio tax already described, and the more fortunate statute of Illinois. It remained for the year 1897 to witness the adoption of direct inheritance taxes by four states almost simultaneously. In Minnesota, an earlier law imposing a probate fee or tax having been declared unconstitutional[4] because of a clumsy and arbitrary schedule which was neither proportional nor progressive nor consistently regressive, and because of an exemption of $2000, the legislature of 1893 proposed a constitutional amendment[5] authorizing a tax, either proportional or progressive, but not exceeding 5 per cent., on inheritances above a fixed amount. This amendment was adopted by the people at the election of the following year by a vote of 108,332 to 41,242; and it bore fruit last year in a statute[6] taxing collateral inheritances of personal property 5 per cent., with an exemption of $5000, and direct inheritances of personal property 1 per cent., with an exemption of $10,000. A few weeks before, the Montana legislature had passed an act[7] which was somewhat ambiguous in its terms, but which was probably intended to tax collateral inheritances 5 per cent., with an exemption of estates of less than $500, and direct inheritances of personal property only, 1 per cent., with an exemption in favor of estates less than $7500 in value. Forty per cent. of the revenue from this source was assigned to the general school funds of the counties, and the remainder to the general fund of the state.

[1] *Laws of 1891*, c. 215.

[2] *Public Acts of 1893*, No. 205.

[3] Chambe *vs.* Judge of Probate, 100 *Michigan*, 112.

[4] State *vs.* Gorman, 40 *Minnesota*, 232.

[5] *General Laws of 1893*, c. 1; *General Laws of 1895*, p. 3.

[6] *General Laws of 1897*, c. 293.

[7] *Laws of 1897*, p. 83.

In the other two cases the new tax on direct heirs was supplementary to a collateral inheritance tax already in force. The Pennsylvania legislature of 1897 imposed a direct inheritance tax of 2 per cent. upon personal property passing to relatives not subject to the existing collateral inheritance tax, $5000 being exempt in all cases.[1] This act has been declared unconstitutional by some of the orphans' courts,[2] because of the exemption and because of a so-called retrospective clause affecting the unsettled estates of persons already dead at the passage of the act; but in view of the supreme court's recent decision in the Illinois cases it seems very unlikely that the higher courts of Pennsylvania will invalidate the tax. The Connecticut legislature imposed a tax of one-half of 1 per cent. upon both real and personal property passing to direct heirs, only the excess above $10,000 of each decedent's estate being taxable.[3] At the same time the rate of the collateral inheritance tax was reduced from 5 to 3 per cent., and the exemption in favor of charitable, educational, religious, and strictly public institutions was repealed.

A comparison of the statutes of the half-dozen commonwealths which now have the direct inheritance tax shows that Connecticut and Illinois are the only ones in which it affects real as well as personal property; this is offset in Connecticut by the unusually low rate, and in Illinois by a very liberal exemption. The Illinois law stands alone among the state legislation of this country in that it distinguishes three classes of relatives instead of only two. The rate for direct heirs is 1 per cent. except in Connecticut and Pennsylvania, and the exemptions vary from the $5000 of Pennsylvania to the $20,000 of Illinois. Unfortunately, the amount of the exemption is not in all cases deducted from the taxable estates or inheritances; and not all of the statutes are clear as to whether the size of the estate or that of the several shares determines the liability to

[1] *Laws of 1897*, No. 47. [3] *Public Acts of 1897*, c. 201.

[2] Blight's estate, 19 *Pennsylvania County Court Reports*, 426; Portuondo's Estate, 20 *id.*, 209; *contra*, Lacey's Estate, 19 *id.*, 431.

taxation. One of the minor points of dispute regarding the Illinois law was whether the rate was determined by the size of the estate or that of the separate shares, and the point is still doubtful. The word "estate" used in that connection was interpreted by the county judge of Cook county to mean the amount passing to a single individual; while the state supreme court, without expressly overturning this construction, seems to take the opposite view when it speaks of the "classes of property, depending upon the estate owned by one dying possessed thereof."

Several of the recent statutes have already been declared constitutional and valid by the state supreme courts. This is the case in Maine, Massachusetts, Tennessee, Montana, and California.[1] The Ohio collateral inheritance tax also has been upheld by the court which annulled the tax on direct heirs.[2] The discrimination between different relatives was sustained for the following reason:

> Since the right to receive property by inheritance is not guaranteed by the constitution, it prescribes no limitation upon the power of the general assembly to designate the persons who may thus receive.

In New York, Pennsylvania, Maryland, Virginia, and other states the constitutionality of this form of taxation has long been settled.

Some unsuccessful attempts to introduce the progressive principle and to tax direct heirs may be mentioned here. Quite a radical measure was introduced in the Nebraska legislature of 1893, proposing a tax graduated from 1 to 20 per cent., according to the size of the estate. A Pennsylvania bill of the same year, providing for a direct inheritance tax of from 1 to 5 per cent., passed the lower house, but being denounced as unconstitutional and socialistic, it failed to become law. The

[1] State *vs.* Hamlin, 86 *Maine*, 495; Minot *vs.* Winthrop, 162 *Massachusetts*, 113; State *vs.* Alston, 94 *Tennessee*, 674; Gelsthorpe *vs.* Furnell (Montana), 51 *Pacific Reporter*, 267; *In re* Wilmerding, 117 *California*, 281.

[2] Hagerty *vs.* State, 55 *Ohio State*, 613.

Iowa Revenue Commission of 1892–3 included among its recommendations, and in the bill it submitted, a progressive tax on both collateral and direct heirs, ranging from 5 to 10 per cent. on the former and from 1 to 5 per cent. on the latter, but allowing liberal exemptions and corresponding deductions in all cases.[1] Instead of passing this part of the bill as reported by the Commission, the legislature simply imposed a proportional tax on collateral inheritances above the sum of $1000, at the usual rate of 5 per cent.[2] In Colorado, last year, a bill modeled upon the Illinois law was introduced and referred to the supreme court for an opinion as to its constitutionality, according to the Colorado custom. The court replied[3] that the bill was not in conflict with the provisions of the state constitution relating to taxation, but at the same time said that the Illinois statute from which it was taken was "one of the most objectionable acts upon the subject to be found." The bill passed the lower house, but went no further.

On the recommendation of Comptroller Roberts of New York,[4] a progressive inheritance-tax bill was passed by the legislature of that state last year, meeting with no opposition in the lower house, but failed to receive the governor's signature. The rates provided for in this bill ran as high as 15 per cent. on estates of more than three million dollars going to collateral heirs, and 10 per cent. on estates exceeding four million dollars passing to direct heirs. The bill received the earnest support of various agricultural and labor organizations. Its opponents retained Mr. William D. Guthrie to appear before the governor in their behalf, and he argued against the bill on both constitutional and politico-economic grounds.[5] His argument is worthy of notice not only because of its own strength, but also because it was a represent-

[1] *Report of the Revenue Commission of the State of Iowa*, 1893, pp. 15, 43.

[2] *Acts of 1896*, c. 28.

[3] 23 *Colorado*, 492.

[4] *Annual Report of the Comptroller of the State of New York*, January 1897, pp. 18–29.

[5] Argument of William D. Guthrie, submitted to the Hon. Frank S. Black, Governor of the State of New York, in opposition to the Dudley Bill, Imposing a Graduated Inheritance or Transfer Tax. N. Y., 1897. 25 pp.

ative if not a typical presentation of the case against progressive taxation, and also because much the same line of reasoning was afterward presented before the supreme court at Washington. Mr. Guthrie maintained that the bill was in conflict with the Fourteenth Amendment and with similar provisions in the state constitution, because the tax was unequal and arbitrary, not taxing upon any uniform or just basis ; he called it spoliation, socialistic and revolutionary. He especially insisted upon the political danger of departing from the strict rule of proportionality in favor of progression ; for, he said :

> If this principle is to be sustained, all moderate estates can be exempted entirely, and the whole burden thrown upon a few rich. . . . . The great danger of all democracies is that one class votes the taxes for another class to pay. Heretofore, our bulwark has been that, as all taxes were equally and uniformly imposed, classes could not be discriminated against, and this protected all. . . . . Introduce the policy of graduated taxes, establish the doctrine that they are permissible under our system, and the whole burden of taxation can be thrown on a few rich.

Mr. Guthrie objected to the particular bill in question also because the rates were fixed not according to the amount of the individual shares inherited, but according to the entire value of the decedent's estate, which he considered with good reason to be a far more arbitrary basis. In attempting a *reductio ad absurdum* he was not so successful. He supposed a tax levied in the reverse order of that proposed by the bill, in other words, a regressive tax, with a rate of 1 per cent. on large amounts and 10 per cent. on small amounts, and said: "No reason against such a classification as is suggested can be discovered which does not apply equally to the classification embodied in the pending act."

Instead of formally vetoing the bill, Governor Black permitted it to expire without his signature ; but he filed with it a memorandum giving his reasons for not signing it. This document was based largely upon Mr. Guthrie's address, containing much of its weakness with but little of its strength ; though he carried Mr. Guthrie's political argument to its logical conclusion by declaring: "In

this country the right of suffrage is carried too far." The reasons given for not approving the bill were that additional revenues were not needed; that if personal property escaped taxation it was the fault of public officials and not of the law; that an inheritance tax might cause hardship in case of deaths in quick succession in the same family; that it would drive away capital; and that the rates proposed in the bill were not uniform nor fair. This last the governor considered the strongest argument, but he contributed nothing toward proving the unfairness of progression, unless by saying: "There is no reason why one man's dollar should pay more than another man's. There is no reason why the last million dollars of a man's property should pay more than the first million."

The Massachusetts Tax Commission of 1893–4 strongly urged the adoption of a progressive inheritance tax.[1] The commission which reported last autumn referred to the difficulties, constitutional and other, of progressive taxation, but recommended a direct inheritance tax of 5 per cent., the rate which already applied to collateral heirs.[2] It was proposed, however, to exempt estates of $10,000 or less, and to grant estates of from $10,000 to $25,000 an abatement of $5000. This tax and a habitation tax were suggested to take the place of the existing taxation of intangible personalty. The House Committee on Taxation, however, reported adversely to both these proposals;[3] and, though the inheritance-tax bill was introduced on petition, it was amended until little remained of it, and then referred to the next legislature.

A national inheritance tax of 2 per cent. on all estates of $5000 or more was proposed by the minority of the Senate Committee on Finance as an amendment to the revenue bill of 1897. The income-tax bill, revived by the minority in the house during the recent internal-revenue debate, also retained the inheritance-

[1] *Full Report of the Joint Special Committee on Taxation*, 1894, pp. 20–25.

[2] *Report of the Commission Appointed to Inquire into the Expediency of Revising and Amending the Laws of the Commonwealth Relating to Taxation*, 1897, pp. 92–104, 189–199.

[3] Report of the Committee on Taxation, *House Document*, No. 1259, p. 37.

tax feature of the act of 1894; and two days before the decision of the supreme court in the Illinois cases was announced, Mr. Lewis of Washington introduced "a bill to levy and collect an inheritance tax upon all estates exceeding ten thousand dollars for the expense of the war of Spain against the United States." The rates proposed in this bill ranged from a minimum of 1 per cent. up to 25 per cent. on all estates of more than two million dollars.

In Canada, as well as in the United States, inheritance taxes have had a remarkable development during the past half-dozen years. Beginning only in 1892, all the more important provinces have now adopted this form of taxation, and always with the progressive feature more or less prominent. Ontario led the way[1] with a tax for the support of public eleemosynary institutions, the rates being 2½ and 5 per cent. for direct heirs, with an exemption for estates of $100,000 or less, 5 per cent. for the nearer grades of collateral relatives, and 10 per cent. for remote relatives and strangers, with an exemption of $10,000 estates in the last two cases, and of all individual shares not exceeding $200. The Nova Scotia law of the same year[2] distinguishes three classes of heirs in much the same way, and the percentages also are the same as in Ontario; but the exemptions are only estates of $25,000 or less going to direct heirs and estates of $5000 in other cases, and individual shares of $200. The Quebec law of 1892[3] provided for a tax graduated according to relationship only; but this has been amended[4] so that the rates for direct heirs now range from one-half of 1 per cent. to 3 per cent., according to the amount involved. In New Brunswick[5] the rates for direct heirs vary from 1¼ to 5 per cent., according to amount, while the nearer collateral relatives pay 5 per cent. in all cases, and others 10 per cent. Prince

[1] 55 *Victoria*, c. 6, amended by 59 *Victoria*, c. 5.

[2] 55 *Victoria*, c. 6, amended by 57 *Victoria*, c. 29, and 58 *Victoria*, c. 8.

[3] 55 and 56 *Victoria*, c. 17.

[4] 57 *Victoria*, c. 16; 58 *Victoria*, c. 16; 59 *Victoria*, c. 17.

[5] 57 *Victoria*, c. 6.

Edward Island[1] taxes direct heirs 1½ or 2½ per cent., and others either 2½ or 7½ per cent. In Manitoba[2] the rates run from 1 to 10 per cent., and are the same for all, except that estates of $25,000 and individual shares of $10,000 going to direct heirs are exempt; this takes away the first grade of the schedule, and makes the lowest tax for direct heirs 2 per cent. In British Columbia[3] the rates are from 1 to 5 per cent., according to amount, with half rates for direct heirs, exemptions of $25,000 in the case of estates passing to direct heirs and $5000 in other cases, and an abatement of $5000 in the former case.

In Australia, too, where progressive inheritance taxes are no new thing, they have made some gains during the past few years; so that now taxes of this description are found in all the colonies, even in West Australia,[4] which levies no other form of direct taxation. The usual maximum rate is 10 per cent., but in Queensland[5] the rates for strangers in blood reach to double that height, and there is now a probate duty of from 1 to 5 per cent in addition, which, in cases of intestacy, becomes a duty of from 2 to 10 per cent. on the letters of administration. On the other hand, a recent attempt in New South Wales to bring the rates up to the general level, as part of the free-trade programme of the Reid ministry, was defeated in the appointive upper house,[6] which is not in the habit of interfering with fiscal legislation. In South Australia[7] there is an interesting and well-considered discrimination in favor of minor children, the minimum rate being only three-fourths of 1 per cent. for them and for the surviving widow, but 1 per cent. for children who have attained their majority.

An account of inheritance-tax legislation during recent years would be incomplete without a mention of the new English "estate duty;" but this tax has been so fully described else-

[1] 57 *Victoria*, c. 5.

[2] 56 *Victoria*, c. 31.

[3] 57 *Victoria*, c. 47.

[4] 59 *Victoria*, c. 18.

[5] 59 *Victoria*, c. 28.

[6] *New South Wales Parliamentary Debates, Session 1897*, p. 5710.

[7] 56 and 57 *Victoria*, No. 256.

where[1] that a brief statement will suffice. In addition to the existing "succession duty" on real estate and "legacy duty" on personal property passing to collateral heirs, both graduated according to relationship from 3 to 10 per cent., the Finance Act of 1894[2] imposed a progressive tax upon all estates of decedents, gradually increasing from 1 per cent. on small estates up to 8 per cent. on those of more than one million pounds; but estates of £1000 or less are not subject to legacy or succession duty, while those of £100 or less are exempt from estate duty also. Under this law, in the rather unusual event of a millionaire's estate going wholly to very remote relatives and strangers in blood, the taxes would amount to 17.2 per cent. of the whole;[3] and even direct heirs taking large estates must pay as much as 8 per cent. No other great nation has adopted rates so high, though some of the Australasian colonies and some of the Swiss cantons do go somewhat higher.

In France the application of progressive rates to the tax on successions has been much discussed during recent years, and has even become a leading political issue. In 1895 the Minister of Finance included quite a heavy progressive inheritance tax in his budget proposals, and the project was passed by the Chamber of Deputies, but not by the senate. The progressive principle finds little support among the economists of France, but the question is still prominently before the public.

What is the explanation of the recent rapid development of inheritance taxes, and of the frequent introduction of progressive rates? The most effective argument, as far as America is concerned, seems to have been the failure of the property taxes to reach personalty. It has been urged that the property which

[1] SELIGMAN, *Essays in Taxation*, pp. 307–314; BASTABLE, *Public Finance*, 2d edition, pp. 557–560. For discussions of the new tax see also articles by the Earl of Winchilsea and Nottingham and the late Lord Playfair in the *North American Revi*, January and March 1895, and one by C. MORGAN-RICHARDSON, entitled Plunder by Death Duties," in the *National Review*, May 1898.

[2] 57 and 58 *Victoria*, chap. 30.

[3] Legacy duty is payable on the amount received by each person, not including the amount of the estate duty.

so generally escapes taxation year by year should at least be made to contribute something at the owner's death, when it cannot longer be concealed. The inheritance tax is regarded as an improved method of reaching personalty. This consideration explains why it is so often applied to personal property alone, where direct heirs are concerned; and it also serves to explain in no small degree the adoption of the progressive principle, for it is generally believed that the most flagrant tax-dodging is done by the wealthy.

Yet this argument is perhaps the most vulnerable of all the various lines of reasoning by which the inheritance tax has been defended. The inequalities and other shortcomings of the general property tax can never be remedied by a tax on inheritances, for the latter is not proportioned to the extent to which the former has been evaded in each particular case. The problem of taxation is not to establish an equilibrium between real and personal property, but to secure justice between taxpayers From this point of view the inheritance tax might be better defended on other grounds; but the popularity and effectiveness of the evasion argument is at least significant as an admission of the failure of the attempt to tax personalty. Other considerations, such as the fortuitous and unearned character of inheritances, the distinct service rendered by government in every such transfer, and even the justifiability of restricting somewhat the privileges of inheritance and bequest, have not been wholly overlooked in the discussions, but in so far as the motives of legislation can be ascertained, the evasion argument seems to have carried more weight than any other. For example, it was the main argument advanced by Comptroller Roberts in New York;[1] and the failure of state taxes on personalty was even urged in favor of the national inheritance tax.

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[1] *Report of the Comptroller*, January 1897, pp. 20–26.